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Attorneys for Defendants

CITY OF MENLO PARK and DAVE BERTINI

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

MICHAEL ZELENY, an individual

Plaintiff,

vs.

EDMUND G. BROWN, JR., an individual, in
his official capacity, et al.

Defendants.

Case No. 17-cv-07357-RS (TSH)

**DECLARATION OF ROBERT J.
GUNDERT IN SUPPORT OF DEFENDANT
CITY OF MENLO PARK'S REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION
FOR PARTIAL DISMISSAL OR FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION**

Date: January 6, 2022

Time: 1:30 p.m.

Courtroom: 3, 17th Floor

Action Filed: December 28,
2017

Trial Date: None Set

I, Robert Gundert, declare:

1. I am an attorney at law licensed to practice before this Court, and a member of the

DEFENDANT CITY OF MENLO PARK'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR PARTIAL
DISMISSAL OR FOR LEAVE TO FILE MOTION FOR RECONSIDERATION; Case No. 17-cv-07357-RS (TSH)

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1 law firm Howard Rome Martin & Ridley LLP, counsel of record for defendants City of Menlo
 2 Park and Dave Bertini, herein. I am a competent adult, with personal knowledge of the matters set
 3 forth in this declaration. If called as a witness, I would competently testify to such matters.

4 2. Plaintiff's opposition indicates that the Court stated during the August 26, 2021
 5 Status Conference that a motion for reconsideration was probably untimely at that point. I do not
 6 recall the Court stating that. What I recall is that the Court stated that prevailing on a motion for
 7 reconsideration would be a challenge ("a high bar" being the phrase used if I recall correctly). I
 8 recognized that and spent considerable time researching and preparing argument in order to try to
 9 meet that challenge.

10 3. Eventually, through the course of my research and discussion with a very reputable
 11 attorney, with significant federal court experience, I came to understand that the motion could be
 12 presented under F.R.C.P. 12(b)(1). It was at or about that time that I also came across some of the
 13 key legal authorities cited and quoted in the motion.

14 4. This is a complex case. Plaintiff makes many claims in this matter, and conflates
 15 certain issues at times (such as the First and Second Amendment issues). Distilling down the key
 16 facts of the case so that they could be addressed has taken a lot of effort. It has never been my
 17 intention to delay presentation of this issue or this motion. It has simply taken this amount of time.

18 I declare under penalty of perjury under the laws of the State of California and the United
 19 States of America that the foregoing is true and correct and that this declaration was executed on
 20 this 20th day of December 2021, at San Mateo, California.
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22
 23 By /s/ Robert J. Gundert

24 Robert J. Gundert
 25 Attorneys for Defendants CITY OF MENLO
 26 PARK and DAVE BERTINI
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